

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

BILLY GENE MARSHALL,)
vs. Plaintiff,) NO. CIV-12-0009-HE
CHARLES LEE, *et al.*,)
Defendants.)

ORDER

Plaintiff, a prisoner appearing *pro se* and *in forma pauperis*, filed this § 1983 action against multiple state correctional officials for alleged deprivations of his constitutional rights that occurred at the Oklahoma State Reformatory, where he is incarcerated. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Gary M. Purcell, who has recommended that a motion for summary judgment¹ filed by defendants Armstrong, Bear, Goodson, Haynes Jones, Morton and Rudek be granted. Plaintiff has objected to the Report and Recommendation.

The magistrate judge determined and the court agrees, having conducted a *de novo* review, that plaintiff failed to exhaust his administrative remedies with respect to all the claims asserted in his complaint. Contrary to plaintiff's assertions, the magistrate judge's conclusion was based on a thorough review of plaintiff's claims and the application of the exhaustion requirement of the Prison Litigation Reform Act to them. *See* 42 U.S.C. §§

¹The motion was a combined motion to dismiss and motion for summary judgment. Because the court considered matters outside of the pleadings, it treated the motion as one filed under Fed.R.Civ.P. 56.

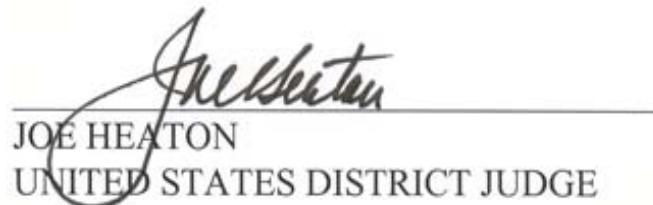
1997e(a).

In his objection, plaintiff mainly challenges the validity of the grievance restriction that was placed on him. As plaintiff did not raise that issue in his complaint or otherwise present it to the magistrate judge, the court will not address it now. United States v. Garfinkle, 261 F.3d 1030, 1031 (10th Cir. 2001)(“In this circuit, theories raised for the first time in objections to the magistrate judge’s report are deemed waived.”).

Accordingly, the court adopts Magistrate Judge Purcell’s Report and Recommendation and grants defendants’ motion for summary judgment [Doc. #24]. Judgment will be entered against plaintiff and in favor of defendants Armstrong, Bear, Goodson, Haynes Jones, Morton and Rudek when the case is concluded with respect to all claims and parties. Fed.R.Civ.P. 54(b).

IT IS SO ORDERED.

Dated this 20th day of September, 2012.



JOE HEATON
UNITED STATES DISTRICT JUDGE